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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,472	07/16/2003	David S. Rathbun	8932-767	7370
51832	7590	03/28/2006		
JONES DAY 222 EAST 41ST STREET NEW YORK, NY 10017-6702			EXAMINER REIMERS, ANNETTE R	
			ART UNIT 3733	PAPER NUMBER
DATE MAILED: 03/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,472

Applicant(s)

RATHBUN ET AL.

Examiner

Annette R. Reimers

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-13, 15-18, 20 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-13, 15-18, 20 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/20/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 6-13, 18, 20, and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Hearn (US Patent Number 5,755,721).

Hearn discloses a surgical drill guide assembly comprising an outer stem, 10, having a longitudinal axis, a drill guiding barrel, 30, is attached to the outer stem, wherein the drill guiding barrel is movably attached to the outer stem at a substantially fixed angle with respect to the outer stem, a threaded rod, 60, releasably attached to the outer stem and a bone plate, 80, and a release mechanism, 38 (see figure 11 and 6 and column 4, lines 58-60). The surgical drill guide assembly further comprises a handle member, 21, offset from the stem by an offset handle arm 32, wherein the handle member pivots in relation to the offset handle arm (see figures 1, 4, and 6). The release mechanism has a non-circular passage, 39, and the rod has a non-circular cross-section at one end (see figures 1, 4, and 6). A ball detent is located in the stem and a groove is located on the rod (see figures 1 and 6). The drill guide barrel pivots about a hinge, 11, on the stem and the drill guide barrel has a depth stop, 41 (see figures 3 and 6). The surgical drill guide assembly also includes a button cam, 22, wherein the handle

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member and offset handle arm are releasably locked in angular position by detents on a button cam being moved into or out of engagement with detent grooves in the handle member (see figures 1 and 5 and column 4, lines 46-54).

With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Hearn, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hearn (US Patent Number 5,755,721) in view of Landry et al. (US patent Number 6,447,512).

Hearn discloses the claimed invention except discloses the claimed invention except for the drill guide barrel having a plurality of drill insertion locations/passageways at different angular orientations. Landry et al. disclose a drill guide assembly and teach the use of fasteners through angulated guide barrels to allow fasteners to be inserted through fastener holes to penetrate adjacent vertebrae through end caps of the vertebrae and into cancellous bone in order to minimize weakening of the endplates of the vertebrae (see column 7, lines 31-40). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Hearn with the drill guide barrel having a plurality of drill insertion locations/passageways at different angular orientations, in view of Landry et al., in order to minimize weakening of the endplates of the vertebrae.

Regarding claim 17, Hearn discloses the claimed invention except for the multiple insertion passageways having angular orientations of about 0° to about 10° toward the longitudinal axis of a bone plate and about 75° to about 90° upward or downward to the longitudinal axis of a bone plate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Hearn, in view of Landry et al., with the multiple insertion passageways having angular orientations of about 0° to about 10° toward the longitudinal axis of a bone plate and about 75° to about 90° upward or downward to the longitudinal axis of a bone plate, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

Applicant's arguments with respect to claims 6-13, 15-18 and 20, filed on December 19, 2005 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

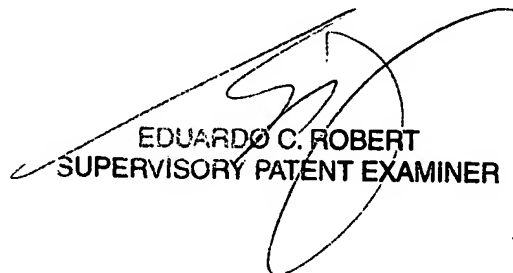
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER